GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

Tribal Welfare Department – Appeal petition filed by Sri Sakuru Manoj Kumar S/o S. Venugopalarao, R/o Visakhapatnam, against the proceedings Rc.No.386/2001/C5, dated 04.03.2002 of the District Collector, Visakhapatnam- under Section 7(2) of the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act 1993 (AP Act No. 16/ 1993) – Appeal Petition allowed – Orders -Issued.

TRIBAL WELFARE (CV2) DEPARTMENT

G.O.MS.No. 25 **Dated: 03-04-2017**

Read the following:

1. Proceedings of the District Collector, Visakhapatnam, Rc.No.386/2001/C5, dated 04.03.2002.
2. Appeal Petition filed by Sri Sakuru Manoj Kumar S/o S.Venugopalarao, R/o Visakhapatnam, before the then Minister (TW& DW) on 06.04.2002.
3. Govt. Memo No.5771/CV.2/2002-1, S.W.(CV.2) Department, dated 30.04.2002.
4. Order of the Hon'ble High Court of A.P., Hyderabad in WP MPNo.17229/2002 in WP No.13828/2002 filed by Sri Sakuru Manoj Kumar, dated 25.07.2007.
5. From the District Collector, Visakhapatnam, Lr. No.(M) Rc.No.386/2001/C5, dated 11.08.2002.
6. Govt. Memo No.5771/CV.2/2002-3, S.W.(CV.2) Department, dated 10.10.2002 & 11.11.2002.
7. Written arguments filed by the appellant before the Appellate Authority on 23.11.2002.
8. Govt. Memo No.5771/CV.2/2002-4, S.W.(CV.2) Department, dated 10.12.2002.
9. Govt. Memo No.5771/CV.2/2002-6, S.W.(CV.2) Department, dated 04.03.2006.
10. Order of the Hon'ble High Court of A.P., Hyderabad in WP MPNo1546/2009 in WP No.1226/2009 filed by Sri Sakuru Manoj Kumar, dated 28.12.2015.
11. Order of the Hon'ble High Court of A.P., Hyderabad in WP MPNo.6579/2006 in WP No.5168/2006 filed by Sri Sakuru Manoj Kumar, dated 10.06.2016.

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ORDER:

In the reference 1st read above, the District Collector, Visakhapatnam has issued orders canceling the ST – Yerukula Caste Certificate obtained from the then Tahsildar, Visakhapatnam (Urban) in 2000 by Sri Sakuru Manoj Kumar S/o S.Venugopalarao.

2. In the reference 2nd read above, Sri Sakuru Manoj Kumar S/o S.Venugopalarao, has filed an Appeal Petition before the Government, against the said Proceedings of the District Collector, Visakhapatnam. After examining the said Appeal Petition, Government have admitted the Appeal Petition and issued stay orders on the proceedings of the District Collector and called for the parawise remarks and connected records from the District Collector, Visakhapatnam in the reference 3rd read above.

3. Sri Sakuru Manoj Kumar S/o S. Venugopalarao, has filed W.P.M.P.No.17229/2002 in Writ Petition No.13828/2002, before the Hon'ble High Court of A.P., Hyderabad against the Registrar, N.T.R. University of Health Sciences, Vijayawada to re-admit him in M.B.B.S. Course for the year 2000-01. In the reference 4th read above, the Hon'ble High Court of A.P., Hyderabad while disposing the said Writ Petition on 27.07.2007 has ordered that as much as the petitioner has completed the course itself, no further adjudication is necessary and it is open for the Government to dispose of the appeal pending before it.

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4. In the reference 5th read above, the District Collector, Visakhapatnam has furnished the Parawise remarks and the connected records on the Appeal Petition filed by Sri Sakuru Manoj Kumar S/o S.Venugopalarao.

5. The said Appeal Petition has been posted for hearing on 26.10.2002 and 23.11.2002 and the same has been informed to the Appellant and the Counsel for the Appellant in the reference 6th read above, and they were requested to attend for the hearing along with all Documentary Evidences/ Certificates in support of the community claim, failing which, it will be construed that there is no explanation what-so-ever to furnish in the matter and that the case will be decided based on the material available with the Government. The Counsel for the Appellant have attended for the personal hearing held on 23.11.2002 and submitted written arguments with the material papers in support of his community claim in the 7th read above. But, the hearing could not taken place due to camp and Posted for next hearing on 31.12.2002 and informed all the concerned. Accordingly, the same was informed to the Appellant and Counsel for the appellant and concerned in the reference 8th read above. The then Appellate Authority has pronounced the judgment in the said appeal petition by examining the written arguments submitted by the appellant and other documents on 23.01.2003. But, on the administrative reason, the Government have decided to review the Judgment pronounced by the then Appellate Authority and again the appeal petition was posted for hearing finally on 20.03.2006 and the same was informed to the Appellant and Counsel for the appellant and concerned in the reference 9th read above and they were requested to attend for the hearing along with all Documentary Evidences/ Certificates in support of the community claim, failing which, it will be construed that there is no explanation what-so-ever to furnish in the matter and that the case will be decided based on the material available with the Government.

6. Sri Sakuru Manoj Kumar S/o S.Venugopalarao, has filed W.P.No. 1226/2009 before the Hon'ble High Court of A.P., Hyderabad, against the Director of Health & Medical, Andhra Pradesh for not appointing him to the post of Civil Assistant Surgeons 2008 to the Medial & Health Services. In the reference 10th read above, the Hon'ble High Court of A.P., Hyderabad while disposing the said W.P. on 28.12.2015 has ordered without expressing any opinion on the merits of the case, the writ petition is closed leaving it open to the petitioner to pursue W.P.No.5168/2006. However, this order will not come in the way of disposal of W.P.No.5168/2006 on merits.

7. Sri Sakuru Manoj Kumar S/o S.Venugopalarao, has filed W.P.M.P.No.6579/2006 in W.P. No. 5168/2006, before the Hon'ble High Court of A.P., Hyderabad against the Govt., Memo No.5771/CV.2/2002-6, S.W.(CV.2) Department, dated 04.03.2006. In the reference 11th read above, the Hon'ble High Court of A.P., Hyderabad while disposing the said W.P. on 10.06.2016 has ordered the said Writ Petition is allowed, set asides Govt., Memo No.5771/CV.2/2002-6,S.W.(CV.2)Department, dated 04.03.2006 and consequently the respondents are directed to take consequential action pursuant to the orders of the Hon'ble Minister dated 23.01.2003. It is also held that the said exercise shall be completed within a period of two months from the date of receipt of a copy of the order.

8. Based on the directions of the Hon'ble High Court in the reference 11th read above and on perusal of the records/ the copies of evidences/academic record/ grounds filed by the Appellant / the parawise remarks submitted by the District Collector, Visakhapatnam and proceedings of the District Collector, Visakhapatnam , dated 04.03.2002, the Appellate Authority has observed as follows:

I. Grandmother of the Appellant Viz., Peetla Gnanamma is the daughter of Peetla Ankayya and Peetla Bussamma of Kapparalatippa village, Nellore District, they belong to Yerukala Community which is a Schedule Tribe under presidential Order issued Article 341 of the Constitution of India. The said Peetla Gnanamma studied upto 5th class, she joined in Bitragunta Settlement Reformatory Primary School and after completion of 5th class, she joined in A.B.M. Girls High School, Nellore upto SSLC. But she failed in the SSLC

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Examination, and underwent nurse training course at Visakhapatnam. Thereafter, she secured Nurse appointment in the K.G. Government Hospital, Visakhapatnam. Subsequently, she was transferred to Government Hospital Chirala, Prakasam District. The said Peetla Gnanamma married one Billa Ramamurthy in the first instance and thereafter she divorced him. While she was doing her Nurse course at Visakhapatnam, she fell in love with Sakuru Tammarao of Chodavaram and later got married. Out of the said wedlock they got five sons and two daughters. All the sons and daughters were born in Kapparalatipa Village. In view of the employment of his grandmother Peetla Gnanamma, his father and his brothers were brought up by his great grandmother Peetla Bussamma and they studied in Kapparalatippa village till the completion of their primary school education. The counsel for the appellant also contended that the people of the Kapparalatippa village accepted his father and his brothers as Yerukala community and since beginning the father of the appellant has been enjoying the benefits conferred to the Scheduled Tribe candidate. To substantiate the contention of the appellant that his father was accepted by the Yerukala community, he relied on the judgment of the court of 3rd Additional Junior Civil Judge, Visakhapatnam passed in O.S.No. 27/1992 dated 28-3-1998. From the perusal of the said decree and judgment, the paternal uncles for the appellant have adduced evidence of one Sri Vugribanni and one Sri A Venkata Subbaiah who are the villagers of Kapparalatippa village and they have deposed in the said suit that the people of the Kapparalatippa accepted the paternal uncles of the appellant as their community. Basing on the said evidence the court of the 3rd Additional Junior Civil Judge, Visakhapatnam decreed the said suit. To disprove the said contention of the appellant, no evidence is available on record and there is no denial in the para-wise remarks also.

II. The Government of India, Ministry of Home Affairs issued a letter dated 4th March, 1975 thereby explaining the legal position with regard to status of the children belonging parents, one of whom is a member of the Schedule caste or scheduled Tribe community. As per the said letter, in the case of marriage between a tribal with non-tribal, the main factor for consideration is whether the couple were accepted by the society then their children shall be deemed to be schedules Tribe. It is also mentioned in the said letter that when a schedule Tribe women have children from marriage with a non-schedule Tribe and the said children may be treated as Scheduled Tribes, if the members of the Schedule Tribe community accepted them and treated them as Scheduled Tribes only. Basing on the said Guide lines, the Government of Andhra Pradesh issued G.O.Ms No. 371, dated 13th April, 1976 thereby stating that where either of the parent belong to Scheduled caste, scheduled Tribes or Backwards Classes, the child can be declared as belonging to the caste of either parent and they will be eligible for the concessions allowed to the persons of that caste. Basing on the caste certificate, issued by the competent authorities, the father of the appellant, his paternal uncles and paternal aunts have enjoyed and are enjoying the benefits conferred to a schedule tribe candidate.

III. The DLSC has also called for reports from the two members of the Scrutiny Committee namely the Joint Director, TCR & TA Paderu and the District Tribal Welfare Officer, Visakhapatnam and the said two members submitted reports to the DLSC stating that the Appellant belongs to Yerukula Community. The contentions raised by the appellant is that the DLSC submitted report of the Commissioner of Tribal Welfare dated 17.8.1990 there by recommending to cancel the caste certificate of the appellant and basing on the said recommendations, the District Collector cancelled the caste

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certificate of the appellant. The contention of the appellant is that the report of the Commissioner of Tribal Welfare dated 17.8.1990 was set aside by the Hon'ble High Court in W.P.No. 12554 of 1990. By the said report, the Commissioner of Tribal Welfare has submitted a report stating that the paternal uncles of the appellant are not belong to Yerukala Tribe and they are Dona Dasaries challenging the said report, the paternal uncles of the appellant filed writ petition No.12554 of 1990, before the Hon'ble High Court of A.P., and the Hon'ble High Court of A.P. set aside the said report and directed the writ petitioners therein to approach the civil court for Declaration that they belong to Schedule Tribe. In pursuance thereof the paternal uncles of the appellant, filed Civil Suit O.S.No.27 of 1992 on the file of the III Additional Junior Civil Judge, Visakhapatnam for declaration and the said suit is decreed vide Judgment dated 28-03-1998 declaring that they belong to Yerukala and that they are schedule tribes. Aggrieved by the said decree and Judgment, the Government filed on appeal in A.S.No.117 of 1998 and the said Appeal was also dismissed. The Counsel for the appellant also filed the copy of the judgment passed in W.P.No.12554 of 1990, dated 8.7.1991 and the judgment of the Court of IIIrd Additional Civil Judge, Visakhapatnam passed in O.A,.No. 27 of 1992 and the judgment in A.S No.117 of 1998.

IV. From the perusal of the above said judgments , it is evident that the report of the Commissioner of Tribal Welfare dated 17.08.1990 was set aside by the High Court in WP.No.12554 of 1990 and directed the paternal uncles of the appellant to file Civil Suit O.S.No. 27 of 1992 on the file of the III Additional Junior Civil Judge, Visakhapatnam for declaration and the said suit is decreed vide judgment dated 28.3.1998 declaring that they belong to Yerukula and that they are Scheduled Tribes. Aggrieved by the said decree and judgment, the Government filed on Appeal in A.S.No.117 of 1998 and the said Appeal was also dismissed. The above facts have not been denied by the District Collector and not decreed the above in his parawise remarks. In these circumstances when the report of the Commissioner of Tribal Welfare dated 17.8.1990 is set aside by the Hon'ble High Court, the DLSC ought not to have taken the said report into consideration and ought not to have cancelled the caste certificate of the Appellant basing on the said report. The Counsel for the Appellant has contended that as per Sub-Rule 3 of Rule 9, the Scrutiny Committee shall have to cause an enquiry through the cell of protection of Civil Right/Vigilance Cell shall cause investigation with the Social status claimed by the incumbent. From the perusal of the parawise remarks and the records, that the DLSC did not cause any such enquiry and did not follow the mandatory procedure prescribed under the Rule. The next contention of the Appellant is that under Sub Rule(5) of Rule 9, the Scrutiny Committee shall have to consider and compare the enquiry reports of the Revenue departments, cell of the Protection of Civil Rights/Vigilance and the reports of the expert or Officer of the research Organization of the Commissionarate is genuine or not. The Joint Director(FAC), TCR& TI., Paderu and the District Tribal Welfare Officer submitted reports stating that the Appellant belongs to the Yerukula Community. The Scrutiny Committee in total ignorance of the said two reports submitted its own report to the District Collector stating that the Appellant does not belongs to Yerukula Caste. Hence, the report of the Scrutiny Committee is contrary to the mandatory procedure prescribed under the said rules.

V. From the perusal of the record as well as the parawise remarks, it is found that the two members of the DLSC submitted reports to the DLSC stating that the appellant belongs to Yerukula Tribe, but the

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DLSC has not placed any reliance on the said two reports on the ground that the said two members submitted reports relying on the some books which were not recognized by the Government of Andhra Pradesh. Before the DLSC, three reports are available, two reports in favour of the Appellant and one report against. The report, which was against the Appellant was set aside by the High Court. Therefore, the DLSC ought to have compare, the two reports available before him as required under Sub Rule 5 of Rule 9 and ought to have come to a independent conclusion. This procedure was also not followed by the DLSC. The counsel for the appellant also contended that the findings recorded by the Commissioner of Tribal Welfare in his report dated 17-8-1990 are not correct. He contended that the finding of the Commissioner of Tribal Welfare that the Peetla which is the surname as the appellants grandmother is unknown is not correct. To substantiate his contention that the surname of the Peetla is known in the Yerukula Community, he relied on Anthropological Authority namely the History of Railway Thiefs written by Mr.Papa Rao Naidu in the year 1901 and other authoritative namely the making of criminal Tribes-patterns and transaction. In these books the entire history of the Yerukula Community is traced out and after thorough investigation they found that the peetla surname are innumerable surnames in the Yerukula community. The Counsel for the appellant also content that the other finding of the Commissioner that the grandmother of the Appellant belongs to Donga Dasari is also not correct. To substantiate the said contention the counsel for the appellant relied on two authoritative books namely the caste and tribes of the Southern Indian written by Mr. Edward Thurston and making of criminal Tribes-patterns and transactions written by Vaculambaram Lalitha. As per the said two books that the Donga Dasari or Kattera is not a community but it is only an Appellation given to persons belonging to Yerukula Community who used to indulge in petty thefts like snatching chains, open pockets and bags etc., with the aid of Scissors. The Counsel for the appellant has also filed a copy of the Judgment of Andhra Pradesh Hon'ble High Court passed in WP No.8367/93, dated 27-07-1990. This is a case where the genuineness of the caste of one Mr.Goddeti Ravikumar thereby holding that Donga Dasari is a sub group of Vaddera caste and he is not a Yerukula. Questioning the said proceedings of the Commissioner of Tribal Welfare from the said Ravi kumar filed the above said writ petition. In the said judgment the Hon'ble High Court has categorically held that the persons settled in Kapparalatippa settlements although described as Donga Dasaries and their community being Yerukula cannot be treated as persons belonging to a forward community and they must necessarily belonging to a Schedule Tribe, caste or a Backward Class. But, Donga Dasari does not find place in the list of Schedule Tribes, castes or Backward Communities therefore the Hon'ble High Court held that the findings of the Commissioner that the Kattera is a sub caste of Vaddera caste is clearly unsustainable and it is not open to the Commissioner to modify by such declaration any list of recognized Backward Communities, Scheduled Castes and Scheduled Tribes.

VI. From the perusal of the Anthropological reports and judgment of the Hon'ble High Court it is clear that there is no "Donga Dasari at all and the Commissioner cannot equate "Donga Dasari" community. Therefore, the findings recorded by the Commissioner of Tribal welfare in report dated 17.8.1990 that "Donga Dasari" is a section of Dasari" community is without any basis and in violation of the Judgment of the Honourable High Court passed in Writ Petition No.8367 of 1990. In similar circumstances with regard to one Miss.Peetla Vedavani, who is the Appellant's cousine, the DLSC, Nellore conducted an enquiry with respect to her caste. The DLSC,

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Nellore after conducting thorough investigation and research submitted its report to the District Collector, Nellore stating that she belongs to Yerukula by caste which is a Schedule Tribe. Basing on the said report the District Collector by his proceedings D.Dis (C4) 3789/2000 dated 16-12-2000 confirmed her caste as S.T. Yerukula. The said proceedings were also forwarded to the Director of Tribal Welfare, A.P., Hyderabad. Therefore, from the above said facts it has to be safely held that the Appellant is a Yerukula caste candidate, which is Scheduled Tribe.

VII. After receipt of the judgment in W.P.No.5168/2006, dt.10.06.2016, again the file was placed before the Hon'ble M(SWE&TWE) for necessary action/decision, whereupon, it came up for hearing on 24.01.2017. Having gone through the entire file it is found that the order of the Hon'ble High Court in WP.No.5168/2006, dt.10.06.2016 became final and the caste of Sri Sakuru Manoj Kumar is ST(Yerukula). Therefore the orders passed by the Learned District Collector, Visakhapatnam are hereby set aside, in the result the appeal is allowed and the Notification of the District Collector, Visakhapatnam dt. 04.03.2002 is set-aside.

9. In view of the above facts and circumstances, the Government is of considered view that the order of cancellation of caste certificate formerly issued in favour of the Appellant as ST- Yerukula is not sustainable under Law and hence the order of the District Collector, Visakhapatnam, passed in Proceedings Rc.No.386/2001/C5, dated 04.03.2002 is liable to be interfered with and set aside. Further, the Government has no hesitation to hold that by the impugned order of District Collector, Visakhapatnam, has ignored the principles of natural justice and has gone in haste cancelling his Caste Certificate. Even though the impugned order of learned Collector is very lengthy he has not considered, relevant aspects which obviously have the strength to reverse the finding, if they are considered. Therefore, the Government is of opinion that the principles of natural justice should be followed at any rate and violation of the same would entail the subject order liable to interference.

10. The Government, in exercise of the powers conferred under Section 7(2) of the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act 1993 (Act No16 of 1993), is hereby allow the Appeal Petition filed by Sri Sakuru Manoj Kumar S/o S.Venugopalarao, by upholding his Scheduled Tribe(Yerukula) claim and the Proceedings of the District Collector, Visakhapatnam issued in the reference 1st read above are set- aside.

11. Consequently, the District Collector, Visakhapatnam shall take necessary action in the matter.

12. The records (containing Rc.No.386/2001/C5, dated 04.03.2000, NF: 24 pages + CF: 217 pages) received from the District Collector, Visakhapatnam through 5th read above, are returned herewith in original to the District Collector, Visakhapatnam and he is requested to acknowledge the receipt of the same, immediately.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

R.P. SISODIA
PRINCIPAL SECRETARY TO GOVERNMENT

To

The District Collector, Visakhapatnam
(with original records) (BY RPAD)

Sri Sakuru Manoj Kumar,
13-20-14,
Maharanipeta,
Visakhapatnam District.

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M/s. M. Ravindra Nath Reddy, Advocate,
203, Lingapur House, Himayatnagar,
Hyderabad -29.

The Director of Health & Medical Education.

The Registrar, N.T.R. University of Health Sciences,
Vijayawada.

Copy to:

The Director, TCR& TI, AP, Amravati.
The OSD to Hon'ble Minister(SWE&TWE)
The P.S. to Principal Secretary (TW).

// FORWARDED:: BY ORDER //

SECTION OFFICER